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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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10 JAIME IGNASCIO ESTRADA,) No. C 10-4832 LHK (PR)
11 Plaintiff,) ORDER DENYING MOTIONS
12 v.) FOR DEFAULT JUDGMENT
13 C. MALO-CLINES,) AND CONTEMPT OF COURT
14 Defendant.) (Docket Nos. 25, 26, 27)

15 Plaintiff, a state prisoner proceeding *pro se*, filed a civil rights complaint pursuant to 42
16 U.S.C. § 1983 alleging that Pelican Bay State Prison (“PBSP”) officials violated his
17 constitutional rights. Plaintiff has filed three motions for default judgment and contempt of
18 court. Defendant was not served until after the deadline for filing a dispositive motion had
19 passed. (Docket Nos. 24, 25.) Soon thereafter, defense counsel filed a motion for an extension
20 of time in which to file a dispositive motion. (Docket No. 25.) On May 2, 2011, the Court
21 granted Defendant’s motion.

22 Federal Rule of Civil Procedure 55(b)(2) provides for a Court ordered default judgment
23 after an entry of default under Federal Rule of Civil Procedure 55(a). *See Penpower Technology*
24 *Ltd. v. SPC Technology*, 627 F. Supp. 2d 1083, 1088 (N.D. Cal. 2008) (emphasis added). Here,
25 although Plaintiff sought an entry of default (docket no. 26), none had been entered by the Court
26 Clerk. *See Fed. R. Civ. P. 55(a)*. Moreover, Defendant appeared in this action before Plaintiff
27 moved for entry of a default judgment. Thus, Plaintiff failed to demonstrate any prejudice from
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1 Defendant's delay. *See Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986); *Abney v.*
2 *Alameida*, 334 F. Supp. 2d 1221, 1235 (S.D. Cal. 2004); *see also Lau Ah Yew v. Dulles*, 236 F.2d
3 415, 416 (9th Cir. 1956) (per curiam) (upholding denial of motion for entry of default judgment
4 where answer was not timely). Accordingly, the Court DENIES Plaintiff's motions for entry of
5 a default judgment and contempt of court.

6 This order terminates docket numbers 25, 26, and 27.

7 IT IS SO ORDERED.

8 DATED: 5/24/11

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LUCY H. KOH
United States District Judge

